

118-0102019-002

Agenda Item Nos. 5(b) and (c)

Meeting of April 16, 2019

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Executive Director

SUBJECT: Authorizing the Executive Director to extend the terms of the Exclusive Negotiations Agreements and predevelopment Loan Agreements for the affordable rental housing mixed-use projects at Candlestick Point North Block 10a and Candlestick Point South Block 11a; and adopting environmental findings pursuant to CEQA; Bayview Hunters Point Redevelopment Area

EXECUTIVE SUMMARY

OCII has entered into Exclusive Negotiations Agreements and Predevelopment Loan Agreements governing development of affordable housing at Candlestick Point North Block 10a ("CPN 10a") and Candlestick Point South Block 11a ("CPS 11a"). The developers of each project have proceeded diligently to meet development milestones under their respective agreements. However, the necessary infrastructure to continue project development is not available, at no fault of the affordable developers. Thus, the affordable developers cannot comply with further milestones under their respective ENA and Loan Agreement. Per the respective agreements, the Executive Director has determined that this lack of infrastructure is a force majeure condition, resulting in excusable delay until the necessary infrastructure is provided. However, because the CPN 10a and CPS 11a agreements will expire shortly, they will need to be extended once the force majeure condition is resolved (and the agreements restart), to allow the developers sufficient time to complete their required work.

Staff recommends that the Commission authorize the Executive Director, in her discretion, to approve extensions to the ENA and Loan Agreement for CPN 10a and CPS 11a, for a period of up to eighteen months provided the Executive Director makes certain determinations concerning the resolution of excusable delay, and the consistency of such extension with the affordable housing interests of OCII.

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MAYOR

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BACKGROUND

CP Development Co, LLC the master developer ("Master Developer") under the Candlestick Point/Hunters Point Shipyard Phase 2 Disposition and Development Agreement ("CP/HPS2 DDA"), is responsible for making horizontal improvements (i.e. the installation of utility infrastructure and the creation of developable lots), at Candlestick Point. This includes the lots and infrastructure serving the planned affordable housing projects at CPN 10a and CPS 11a. Pursuant to the CP/HPS2 DDA, these improvements are to be made in three phases, referred to as Major Phases, and by Sub-Phases within each Major Phase, and all in accordance with the schedule of performance included in the CP/HPS2 DDA.

On March 15, 2016, the Successor Agency Commission (the "Commission") approved the Master Developer's Major Phase Application for the first Major Phase in Candlestick Point, "Major Phase 1 CP", by Resolution No. 13-2016. As approved, Major Phase 1 CP is comprised of 16 blocks of new development, and consists of two significant projects, the redevelopment of a major portion of the Alice Griffith public housing site and the Candlestick Point Center mixed-use destination featuring housing, retail and entertainment. The CPN 10a and CPS 11a affordable housing projects are also within Major Phase 1 CP.

In August 2016, the Commission approved a development team for CPN 10a (Tenderloin Neighborhood Development Corporation and Young Community Developers, "CPS 10a Developer") by Resolution No. 39-2016, and for CPS 11a (San Francisco Housing Development Corporation and Mercy Housing, "CPS 11a Developer") by Resolution No. 40-2016. Thereafter the Commission authorized, on December 6, 2016 (Resolution No. 52-2016) and February 7, 2017 (Resolution No. 3-2017), respectively, Exclusive Negotiations Agreements (each an "ENA") concerning development of CPN 10a and CPS 11a, and Predevelopment Loan Agreements (each a "Loan Agreement") to fund predevelopment activities. Since that time, the developers have proceeded diligently to meet all milestones established in their ENAs.

In June 2018, the Executive Director granted the CPN 10a Developer's request, as provided for in the ENA, to extend the term of the CPN 10a ENA. The ENA will now expire in June 2019, and the CPN 10a Loan Agreement will mature in December 2019. Also in June 2018, the Executive Director granted the CPS 11a Developer's request to extend the term of the CPS 11a ENA, which will now expire in June 2019. The CPS 11a Loan Agreement will mature in February 2020.

In August 2018, the Master Developer informed OCII that the proposed anchor retail developer within the Candlestick Point Center was unlikely to continue its current agreement with the Master Developer, and as a result Master Developer would be seeking to work with OCII to revise the development and infrastructure program for Major Phase 1 CP. OCII informed the CPN 10a and CPS 11a developers that this process would likely result in delays to the overall schedule for infrastructure delivery to their projects. In the meantime, OCII staff worked with the CPN 10a and CPS 11a Developers to advance their projects as far as possible given existing resources and expertise committed to the projects.

DISCUSSION

OCII now anticipates that in late 2019 the Master Developer will seek Commission approval of the revised development program and infrastructure schedule for Major Phase 1 CP. Thus, for reasons beyond the control of the CPN 10a and CPS 11a Developers, necessary infrastructure for the two projects will not be available in time to meet the development timelines established in the respective ENAs and Loan Agreements, at no fault of the developers.

Under the applicable provisions of the ENAs and Loan Agreements (sections 5.5 and 19.3, respectively), the conditions described above can be considered a force majeure event, which excuses performance hindered by the force majeure conditions (i.e. the lack of infrastructure), until such time as these conditions have been resolved.

In accordance with the applicable provisions of the ENA and Loan Agreement, the CPN 10a and CPS 11a Developers have requested, and the Executive Director has determined, that a force majeure exists based on the delay in infrastructure, and would continue to exist until such time as the Executive Director determines, in her sole discretion, that Master Developer has made sufficient progress on installation of Major Phase 1 CP infrastructure to allow recommencement of development activities on the CPN 10a and CPS 11a projects.

In the interim, and in accordance with the provisions of the respective ENAs and Loan Agreements, the terms of these agreements and certain other time-sensitive provisions would be tolled until the resolution of the force majeure event. The CPN 10a and CPS 11a Developers may, with staff's concurrence, take certain continuing actions to facilitate the projects' readiness to restart in the future (including completion of the Site Permit and Design Development Documents), which will result in some reimbursements under the respective Loan Agreements, but activities will mostly be suspended.

However, once the infrastructure issues are resolved, and work under the existing ENA and Loan Agreement recommence, the existing terms of these agreements will not provide sufficient time for the CPN 10a and CPS 11a Developers to meet the remaining development milestones in their respective agreements. Therefore, staff recommends that the Commission grant the Executive Director the discretionary authority to extend the terms of the ENAs and Loan Agreements, for additional periods of no more than eighteen months, upon the Executive Director's determination that (a) the conditions justifying force majeure no longer exist, and (b) the extensions are otherwise in the best interest of OCII's affordable housing goals and obligations under the Redevelopment Plan and CP/HPS2 DDA.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

On June 3, 2010, the Former Agency Commission, by Resolution No. 58-2010, and the San Francisco Planning Commission, by Motion No. 18096, certified the Final Environmental Impact Report for the Candlestick Point-Hunters Point Shipyard Phase 2 Project, and determined that document to be adequate, accurate, and objective and in compliance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA") and the CEQA Guidelines (14 California Code of Regulations Sections 15000 et seq.) (the "CEQA Findings"). Subsequent to these

actions, the Successor Agency Commission adopted five addenda to the Final Environmental Impact Report, and made additional findings of consistency with CEQA (collectively, the Final Environmental Impact Report and adopted addenda are referred to as the "FEIR", and the "CEQA Findings" as referred to below, include any additional findings made in adopting the addenda).

Staff recommends that the Commission find these approvals are consistent with the project as analyzed in the FEIR, and requires no additional environmental review beyond the FEIR and CEQA Findings, pursuant to CEQA Section 21166 and the CEQA Guidelines Sections 15180, 15162, 15163, and 15164, for the following reasons:

These approvals do not require major revisions to the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and,

No new information of substantial importance to the project analysis in the FEIR has become available, which would indicate that (i) these approvals will have significant effects not discussed in the FEIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measures or alternatives, which are considerably different from those in the FEIR, will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the FEIR; and,

OCII staff has determined that the modifications to the CPN 10a and CPS 11a ENAs and Loan Agreements are consistent with the CP/HPS 2 project as analyzed in the FEIR, and recommends that the Commission require no additional environmental review beyond the FEIR and its addenda pursuant to State CEQA Guidelines Sections 15180, 15162, 15163, and 15164.

NEXT STEPS

Commission will be asked to take action on an update to Major Phase 1 CP in late 2019. When an infrastructure schedule is confirmed, project Sponsors will re-initiate predevelopment work on CPN 10a and CPS 10a. This will include further refining project designs, proceeding with the building permit application process, and applying for construction financing.

(Originated by Annie Wong and Kim Obstfeld, Development Specialists)


Nadia Sesay
Executive Director

Attachment 1
CPN 10a and CPS 11a Location Map

